

Message

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**From:** McGill, Thomas [Mcgill.Thomas@epa.gov]  
**Sent:** 1/14/2021 6:25:31 PM  
**To:** Hurl, Kathy [Hurl.Kathy@epa.gov]; Beck, Whitney [beck.whitney@epa.gov]; Laycock, Kelly [Laycock.Kelly@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]  
**Subject:** RE: Seminole Tribe of Florida Request for Consultation - 404 Assumption

Thank you Kathy, that's a good suggestion.

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**From:** Hurl, Kathy <Hurl.Kathy@epa.gov>  
**Sent:** Thursday, January 14, 2021 1:00 PM  
**To:** McGill, Thomas <Mcgill.Thomas@epa.gov>; Beck, Whitney <beck.whitney@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>  
**Subject:** RE: Seminole Tribe of Florida Request for Consultation - 404 Assumption

Should we also include the language

**Ex. 5 Deliberative Process (DP)**

## Ex. 5 Deliberative Process (DP)

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**From:** McGill, Thomas <Mcgill.Thomas@epa.gov>  
**Sent:** Thursday, January 14, 2021 12:56 PM  
**To:** Hurl, Kathy <Hurl.Kathy@epa.gov>; Beck, Whitney <beck.whitney@epa.gov>; Laycock, Kelly <Laycock.Kelly@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>  
**Subject:** RE: Seminole Tribe of Florida Request for Consultation - 404 Assumption

FDEP's mapping tool was generally referenced in the FDEP-Corps MOA and based on a short conversation with Heather this morning it was also referenced in section J of their program description. Assuming that's accurate I have drafted the following language for our letter to the Seminole Tribe regarding their interest to consult on this. If you have any comments or suggestions (other than relating to striking "the" before EPA) please let me know. Thanks! Tom

## Ex. 5 Deliberative Process (DP)

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**From:** Hurlid, Kathy <[Hurlid.Kathy@epa.gov](mailto:Hurlid.Kathy@epa.gov)>  
**Sent:** Thursday, January 14, 2021 10:44 AM  
**To:** Beck, Whitney <[beck.whitney@epa.gov](mailto:beck.whitney@epa.gov)>  
**Cc:** Laycock, Kelly <[Laycock.Kelly@epa.gov](mailto:Laycock.Kelly@epa.gov)>; McGill, Thomas <[Mcgill.Thomas@epa.gov](mailto:Mcgill.Thomas@epa.gov)>; Calli, Rosemary <[Calli.Rosemary@epa.gov](mailto:Calli.Rosemary@epa.gov)>  
**Subject:** RE: Seminole Tribe of Florida Request for Consultation - 404 Assumption

## Ex. 5 Deliberative Process (DP)

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**From:** Beck, Whitney <[beck.whitney@epa.gov](mailto:beck.whitney@epa.gov)>  
**Sent:** Thursday, January 14, 2021 10:40 AM  
**To:** Hurlid, Kathy <[Hurlid.Kathy@epa.gov](mailto:Hurlid.Kathy@epa.gov)>  
**Cc:** Laycock, Kelly <[Laycock.Kelly@epa.gov](mailto:Laycock.Kelly@epa.gov)>; McGill, Thomas <[Mcgill.Thomas@epa.gov](mailto:Mcgill.Thomas@epa.gov)>; Calli, Rosemary <[Calli.Rosemary@epa.gov](mailto:Calli.Rosemary@epa.gov)>  
**Subject:** RE: Seminole Tribe of Florida Request for Consultation - 404 Assumption

They've got a good caveat in Stephanie's email but do you mean the title of the tool need to change, Kathy?

These layers are not guaranteed to be accurate and are solely meant to assist the initial screening of an application. After approval of Florida's program, the final determination of 404 permitting jurisdiction can only be made by comparing actual observations of the site to the text of the MOA (e.g. measurement of ordinary high water mark or mean high tide line for Retained Waters, status and boundaries of the property for Indian Country).

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**From:** Hurlid, Kathy <[Hurlid.Kathy@epa.gov](mailto:Hurlid.Kathy@epa.gov)>  
**Sent:** Thursday, January 14, 2021 10:32 AM  
**To:** Beck, Whitney <[beck.whitney@epa.gov](mailto:beck.whitney@epa.gov)>  
**Cc:** Laycock, Kelly <[Laycock.Kelly@epa.gov](mailto:Laycock.Kelly@epa.gov)>; McGill, Thomas <[Mcgill.Thomas@epa.gov](mailto:Mcgill.Thomas@epa.gov)>; Calli, Rosemary <[Calli.Rosemary@epa.gov](mailto:Calli.Rosemary@epa.gov)>  
**Subject:** Re: Seminole Tribe of Florida Request for Consultation - 404 Assumption

So, this was discussed a long time ago and the determination was that the gis tool is not the "official" list of retained waters. It is a tool to help permittees, and the state, but it is not determinative for several reasons. Including the fact that if they change the map, we would need to constantly reap prove it per the regs. By not approving this, they can take a case by case approach.

We probably need to reclassify with corps and FL so they don't misrepresent this as determinative. - Kathy

Sent from my iPhone

On Jan 14, 2021, at 10:18 AM, Beck, Whitney <[beck.whitney@epa.gov](mailto:beck.whitney@epa.gov)> wrote:

Agreed- looks like the tool only went live 11/20 according to the email chain below. We received the retained waters list that is reflected in the tool, but not the tool itself.

Best  
Whitney

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**From:** Laycock, Kelly <[Laycock.Kelly@epa.gov](mailto:Laycock.Kelly@epa.gov)>

**Sent:** Thursday, January 14, 2021 10:17 AM

**To:** McGill, Thomas <[McGill.Thomas@epa.gov](mailto:McGill.Thomas@epa.gov)>; Calli, Rosemary <[Calli.Rosemary@epa.gov](mailto:Calli.Rosemary@epa.gov)>; Hurlid, Kathy <[Hurlid.Kathy@epa.gov](mailto:Hurlid.Kathy@epa.gov)>; Beck, Whitney <[beck.whitney@epa.gov](mailto:beck.whitney@epa.gov)>

**Subject:** RE: Seminole Tribe of Florida Request for Consultation - 404 Assumption

To my knowledge we did not receive the mapping tool with package. The first time I heard FDEP mentioning it's use was the training webinar on Dec 14.

Kelly Laycock  
Wetlands Regulatory Section  
U.S. Environmental Protection Agency  
61 Forsyth St.  
Atlanta GA, 30303  
phone 404 562 9132

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**From:** McGill, Thomas <[McGill.Thomas@epa.gov](mailto:McGill.Thomas@epa.gov)>

**Sent:** Thursday, January 14, 2021 10:15 AM

**To:** Calli, Rosemary <[Calli.Rosemary@epa.gov](mailto:Calli.Rosemary@epa.gov)>; Laycock, Kelly <[Laycock.Kelly@epa.gov](mailto:Laycock.Kelly@epa.gov)>; Hurlid, Kathy <[Hurlid.Kathy@epa.gov](mailto:Hurlid.Kathy@epa.gov)>; Beck, Whitney <[beck.whitney@epa.gov](mailto:beck.whitney@epa.gov)>

**Subject:** FW: Seminole Tribe of Florida Request for Consultation - 404 Assumption

\*\*\*\* deliberative \*\*\*\*\*

I'm a little fuzzy on FDEP's GIS mapping tool, and whether it is part of the package that Florida submitted to EPA. Is it part of their program that we approved? The answer to that question will inform how we will respond to the Seminole's 12/17/20 letter. Thanks, Tom

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**From:** Hicks, Matt <[Hicks.Matthew@epa.gov](mailto:Hicks.Matthew@epa.gov)>

**Sent:** Thursday, December 17, 2020 11:11 AM

**To:** Gettle, Jeaneanne <[Gettle.Jeaneanne@epa.gov](mailto:Gettle.Jeaneanne@epa.gov)>; McGill, Thomas <[McGill.Thomas@epa.gov](mailto:McGill.Thomas@epa.gov)>; Calli, Rosemary <[Calli.Rosemary@epa.gov](mailto:Calli.Rosemary@epa.gov)>; Laycock, Kelly <[Laycock.Kelly@epa.gov](mailto:Laycock.Kelly@epa.gov)>; Palmer, Leif <[Palmer.Leif@epa.gov](mailto:Palmer.Leif@epa.gov)>; Ghosh, Mita <[Ghosh.Mita@epa.gov](mailto:Ghosh.Mita@epa.gov)>; Armor, Suzanne <[Armor.Suzanne@epa.gov](mailto:Armor.Suzanne@epa.gov)>; Nagrani, Kavita <[Nagrani.Kavita@epa.gov](mailto:Nagrani.Kavita@epa.gov)>; Creswell, Michael <[Creswell.Michael@epa.gov](mailto:Creswell.Michael@epa.gov)>

**Subject:** FW: Seminole Tribe of Florida Request for Consultation - 404 Assumption

And Michelle's response back to Stephanie. The GIS layer has been on FDEP's website for months.

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**From:** Michelle Diffenderfer <[mdiffenderfer@llw-law.com](mailto:mdiffenderfer@llw-law.com)>

**Sent:** Thursday, December 17, 2020 10:22 AM

**To:** 'Gray, Stephanie A' <[Stephanie.A.Gray@FloridaDEP.gov](mailto:Stephanie.A.Gray@FloridaDEP.gov)>; Joshua Holmes <[Joshua.R.Holmes@usace.army.mil](mailto:Joshua.R.Holmes@usace.army.mil)>; Hicks, Matt <[Hicks.Matthew@epa.gov](mailto:Hicks.Matthew@epa.gov)>

**Cc:** Rachael Santana <[rsantana@llw-law.com](mailto:rsantana@llw-law.com)>; Wolfe, Justin G. <[Justin.G.Wolfe@dep.state.fl.us](mailto:Justin.G.Wolfe@dep.state.fl.us)>; Jim Shore <[JimShore@semtribe.com](mailto:JimShore@semtribe.com)>

**Subject:** RE: Seminole Tribe of Florida Request for Consultation - 404 Assumption

Thank you Stephanie,

I will share with the Seminole Tribe. I was not aware of this tool and it being now available for us to review. The Seminole Tribe has been asking for it for sometime now so we could comment on it and be sure the Tribe's resources are appropriately coded. Glad to hear that it is still draft and can be updated.

We look forward to consulting with EPA, USACE and BIA on how they determined what Indian Country to include in the mapping.

We very much appreciate the State's continued effort to coordinate and work with the Seminole Tribe on this endeavor.

Michelle

**Michelle Diffenderfer** | President/Shareholder

West Palm Beach, Florida

(o) 561.640.0820 | (m) Ex. 6 Personal Privacy (PP)

<image004.jpg>

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**From:** Gray, Stephanie A <Stephanie.A.Gray@FloridaDEP.gov>

**Sent:** Thursday, December 17, 2020 9:29 AM

**To:** Michelle Diffenderfer <mdiffenderfer@llw-law.com>; Joshua Holmes

<Joshua.R.Holmes@usace.army.mil>; Hicks, Matt <Hicks.Matthew@epa.gov>

**Cc:** Rachael Santana <rsantana@llw-law.com>; Wolfe, Justin G. <Justin.G.Wolfe@dep.state.fl.us>

**Subject:** RE: Seminole Tribe of Florida Request for Consultation - 404 Assumption

Ã,

External Email

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Michelle,

Thank you for sending us a copy of your letter, and for your recognition that we have engaged with the Seminole Tribe of Florida (and others) for the past three years in the development of the proposed State 404 Program.

As I'm sure you're aware, the USACE Retained Waters List GIS Layer map is available on our website at <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/404-assumption>, along with the following information:

This mapping tool is a draft depiction of the approximate extent of Retained Waters, along with a 300 foot guideline, as well as Indian Country, as defined by the Memorandum of Agreement between DEP and the U.S. Army Corps of Engineers (Corps). The map contains a screening widget which allows users to draw shapes or upload shapefiles that represent dredge/fill footprints in order to determine if 404 permitting jurisdiction for a project will be retained by the Corps (footprints fully or partially within Retained Waters and/or Indian Country) or assumed by the State (footprints entirely outside of Retained Waters and Indian Country). The Retained Waters layer was created by combining four datasets to represent waters named on the Retained Waters List and shorelines of waters subject to the ebb and flow of the tide (more information in the layer's metadata). The Indian Country layer was obtained from the Bureau of Indian Affairs' American Indian and Alaska Native Land Area Representation map. Both layers are subject to change if new information becomes available. These layers are not guaranteed to be accurate and are solely meant to assist the initial screening of an application. After approval of Florida's program, the final determination of 404 permitting jurisdiction can only be made by comparing actual observations of the site to the text of the MOA (e.g. measurement of ordinary high water mark or mean high tide line for Retained Waters, status and boundaries of the property for Indian Country). This screening tool is considered draft until EPA's approval of Florida's program.

The mapping tool link went live on November 20, 2020, and is a visual depiction of the Retained Waters List that was provided in both our Notice of Rule Development, published on February 19, 2020, and in the submission of our formal package to EPA on August 20, 2020, as required by 40 C.F.R. 233.11(h). DEP staff provided training on using the tool at the public webinar on December 14, 2020, in which members of your firm were in attendance.

We look forward to our continued engagement with the Seminole Tribe of Florida in the implementation of our State 404 Program should EPA approve it.

Sincerely,

<image006.jpg>

**Stephanie Gray**

Florida Department of Environmental Protection  
Office of the General Counsel  
Assistant Deputy General Counsel  
[Stephanie.A.Gray@FloridaDEP.gov](mailto:Stephanie.A.Gray@FloridaDEP.gov)  
Office: 850-245-2277

**Please note.** Florida has a very broad public records law. This communication may be subject to public disclosure if it regards state business and is not exempt under Chapter 119, Florida Statutes.

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**From:** Michelle Diffenderfer <[mdiffenderfer@llw-law.com](mailto:mdiffenderfer@llw-law.com)>

**Sent:** Thursday, December 17, 2020 7:50 AM

**To:** Gray, Stephanie A <[Stephanie.A.Gray@FloridaDEP.gov](mailto:Stephanie.A.Gray@FloridaDEP.gov)>; Joshua Holmes <[Joshua.R.Holmes@usace.army.mil](mailto:Joshua.R.Holmes@usace.army.mil)>; Hicks, Matt <[Hicks.Matthew@epa.gov](mailto:Hicks.Matthew@epa.gov)>

**Cc:** Rachael Santana <[rsantana@llw-law.com](mailto:rsantana@llw-law.com)>

**Subject:** FW: Seminole Tribe of Florida Request for Consultation - 404 Assumption

**Importance:** High

Stephanie, Matt and Josh, wanted you to be aware of this request.  
Michelle

**Michelle Diffenderfer** | President/Shareholder

West Palm Beach, Florida |

(o) 561.640.0820 | (m) Ex. 6 Personal Privacy (PP)

<image007.jpg>

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**From:** Michelle Diffenderfer

**Sent:** Thursday, December 17, 2020 7:41 AM

**To:** 'Wheeler.andrew@Epa.gov' <[Wheeler.andrew@Epa.gov](mailto:Wheeler.andrew@Epa.gov)>; 'scott.a.spellmon@usace.army.mil' <[scott.a.spellmon@usace.army.mil](mailto:scott.a.spellmon@usace.army.mil)>

**Cc:** 'Walker.mary@Epa.gov' <[Walker.mary@Epa.gov](mailto:Walker.mary@Epa.gov)>; Andrew Kelly (<[andrew.d.kelly@usace.army.mil](mailto:andrew.d.kelly@usace.army.mil)> <[andrew.d.kelly@usace.army.mil](mailto:andrew.d.kelly@usace.army.mil)>; Marcellus W. Osceola Jr. (<[marcellusosceola@semtribe.com](mailto:marcellusosceola@semtribe.com)> <[marcellusosceola@semtribe.com](mailto:marcellusosceola@semtribe.com)>; Jim Shore <[JimShore@semtribe.com](mailto:JimShore@semtribe.com)>; Andrew J. Bowers (<[andrewjbowers@semtribe.com](mailto:andrewjbowers@semtribe.com)> <[andrewjbowers@semtribe.com](mailto:andrewjbowers@semtribe.com)>; Paul Backhouse (<[paulbackhouse@semtribe.com](mailto:paulbackhouse@semtribe.com)> <[paulbackhouse@semtribe.com](mailto:paulbackhouse@semtribe.com)>; Anne Mullins (<[AnneMullins@semtribe.com](mailto:AnneMullins@semtribe.com)> <[AnneMullins@semtribe.com](mailto:AnneMullins@semtribe.com)>; Kevin Cunniff <[kevincunniff@semtribe.com](mailto:kevincunniff@semtribe.com)>; Whitney Sapienza (<[WhitneySapienza@semtribe.com](mailto:WhitneySapienza@semtribe.com)> <[WhitneySapienza@semtribe.com](mailto:WhitneySapienza@semtribe.com)>; Stacy D. Myers (<[stacymyers@semtribe.com](mailto:stacymyers@semtribe.com)> <[stacymyers@semtribe.com](mailto:stacymyers@semtribe.com)>; Rachael Santana <[rsantana@llw-law.com](mailto:rsantana@llw-law.com)>; 'Patricia A. Power (<[ppower@bosepublicaffairs.com](mailto:ppower@bosepublicaffairs.com)> <[ppower@bosepublicaffairs.com](mailto:ppower@bosepublicaffairs.com)>; Stephen Walker <[swalker@llw-law.com](mailto:swalker@llw-law.com)>

**Subject:** Seminole Tribe of Florida Request for Consultation - 404 Assumption

**Importance:** High

Please find attached the Seminole Tribe of Florida's request for consultation regarding the Retained Waters List GIS Layer map being prepared for the State of Florida's assumption of the 404 Program. It is our understanding that this map delineates Indian Country and which waters will remain with the USACE for 404 permitting and which will be assumed by Florida. It is very important to the Seminole Tribe to

receive this map and have consultation on same to ensure that all of the Tribe's lands and waters are correctly delineated.

Thank you on behalf of the Seminole Tribe of Florida for your consideration,  
Michelle Diffenderfer and Rachael Santana

**Michelle Diffenderfer** | President/Shareholder

West Palm Beach, Florida |

(o) 561.640.0820 | (m)

Ex. 6 Personal Privacy (PP)

<image008.jpg>

